



INTERIOR BOARD OF INDIAN APPEALS

Anna Thompson, et. al. v. Eastern Area Director, Bureau of Indian Affairs

17 IBIA 39 (01/23/1989)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ANNA THOMPSON ET AL.

v.

AREA DIRECTOR, EASTERN AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 88-31-A

Decided January 23, 1989

Appeal from a decision of the Eastern Area Director, Bureau of Indian Affairs, concerning a dispute arising out of an election for Chairman of the Coushatta Tribe of Louisiana.

Affirmed.

1. Board of Indian Appeals: Jurisdiction--Indians: Tribal Powers: Generally

The Board of Indian Appeals has jurisdiction over decisions issued by Bureau of Indian Affairs officials under 25 CFR Chapter I. It does not have jurisdiction over decisions made by duly constituted tribal officials or governing bodies.

2. Indians: Tribal Powers: Tribal Sovereignty

One of the most fundamental concepts of Indian law is that Indian tribes are dependent sovereign nations that retain full powers of internal self-government except to the extent that those powers have been limited by treaty or express Federal congressional action. The corollary of this proposition is that, acting alone, states lack the power to limit the sovereignty of an Indian tribe.

3. Indians: Tribal Government: Constitutions, Bylaws, and Ordinances--Indians: Tribal Powers: Tribal Sovereignty

In furthering the doctrines of Indian sovereignty and self-determination, the Department of the Interior has recognized the right of Indian tribes initially to interpret their own governing documents and to resolve their own internal disputes, and, in administering the government-to-government relationship with a tribe, has given deference to that tribe's reasonable interpretation of its own laws.

APPEARANCES: Jerry D. Patchen, Esq., Houston, Texas, for appellants; Neil R. McDonald, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for appellee.

OPINION BY CHIEF ADMINISTRATIVE JUDGE LYNN

On July 11, 1988, the Board of Indian Appeals (Board) received this appeal on referral from the Deputy to the Assistant Secretary--Indian Affairs (Tribal Services) (Deputy Assistant Secretary) under 25 CFR 2.19. 1/ Appellants Anna Thompson, Clamon Thompson, and Leola Sylestine sought review of an April 12, 1988, decision issued by the Eastern Area Director, Bureau of Indian Affairs (BIA; appellee), apparently concerning the results of an October 31, 1987, election for the position of Chairman of the Coushatta Tribe of Louisiana (tribe). For the reasons discussed below, the Board affirms that decision.

Background

The tribe is a Federally recognized Indian tribe. It has organized under amended Articles of Incorporation filed with the Louisiana Secretary of State's office on April 6, 1973. In addition to its Articles of Incorporation, the tribe has enacted certain ordinances and resolutions governing tribal affairs. One such ordinance is Tribal Ordinance No. 1: An Ordinance to Establish Election Rules and Procedures of the Coushatta Tribe of Louisiana.

Pursuant to the tribal election ordinance, an election to choose a new tribal chairman was scheduled for October 31, 1987. Two tribal members filed to be candidates in the October 1987 election. Both candidates were accepted as eligible by the Tribal Election Committee (TEC). A total of 146 votes was cast in the election, 84 for Beverly Poncho and 62 for Barry Langley. Beverly Poncho was certified as the winner of the election by the TEC.

Langley filed a timely complaint challenging the election under Art. XI of the tribal election ordinance. Langley alleged that Beverly Poncho was not an eligible candidate because she did not meet the residency requirement of the tribal election ordinance. 2/ In accordance with procedures set forth in Art. XI, § 1(d)(2), on November 5, 1987, the TEC acknowledged the

1/ Section 2.19 states in pertinent part:

"(a) Within 30 days after all time for pleadings (including extension granted) has expired, the Commissioner of Indian Affairs [or Bureau of Indian Affairs official exercising the administrative review authority of the Commissioner] shall:

"(1) Render a written decision on the appeal, or

"(2) Refer the appeal to the Board of Indian Appeals for decision."

2/ Tribal Council Resolution 85-15, Apr. 4, 1985, which adopted the tribal election ordinance, provided that a candidate must "[b]e a resident of the state of Louisiana for at least one year for Tribal Chairman * * * prior to the Election." This requirement was apparently amended on Apr. 16, 1987, to provide that "[c]andidates for Tribal Chairman must be a resident of the State of Louisiana (and reside in Allen Parish) for at least 1 year prior to the election * * *." The requirement for residency in Allen Parish was deleted by Tribal Council Resolution 87-48, Oct. 30, 1987.

merit of the complaint, but reaffirmed the election on the grounds that the irregularity was not of sufficient importance to void the election. 3/

Continuing to pursue his appeal rights as set forth in Art. XI, § 2, of the tribal election ordinance, Langley requested the appointment of a special CFR court judge 4/ or U.S. Magistrate to review his complaint. Sheila Lambert, Chief Magistrate for the Court of Indian Offenses for the Eastern Band of Cherokee Indians, was appointed to hear the appeal. According to Art. XI, § 2(b), of the tribal election ordinance, the CFR court judge was to render a decision to: "(1) Affirm the decision of the Tribal Election Committee and certify the validity of the election in question, or (2) Reverse the decision of the Tribal Election Committee and order it to conduct a special election to fill positions vacated by the voided election."

By a judgment dated December 7, 1987, Judge Lambert concluded

[t]hat the candidate, Beverly Poncho, was not a valid candidate for Tribal Chairman of the Coushatta Indian Tribe, according to the Tribal Election Procedures, Tribal Ordinance No. 1, that was in effect at the time of her approval by the Tribal Election Committee.

NOW THEREFORE, BE IT ORDERED, ADJUDGED AND DECREED, THAT THE Candidate, BEVERLY PONCHO, be and is hereby ordered to be declared an invalid candidate, and that she be removed from office as Tribal Chairman.

(Judgment at 2).

Apparently in response to questions received, on December 14, 1987, the Superintendent of the Choctaw Agency (Superintendent) stated BIA's position in regard to Judge Lambert's judgment. The Superintendent's letter states:

3/ Art. XI, § 1 (d) and (e) , states:

“d. Following receipt and review of a properly executed complaint, the Tribal Election Committee shall issue findings:

“(1) To dismiss the complaint as unfounded, or

“(2) To acknowledge the merit of the complaint but to reaffirm the election in question on the grounds that the irregularity was not of sufficient importance to void the election, or

“(3) To acknowledge the merit of the complaint and to void the election in question.

“e. In the event that the Tribal Election Committee voids a tribal election as provided under Section d, (3) above, the Committee shall call a special election to fill the positions affected by the voiding of the election in question.”

4/ A CFR court, or Court of Indian Offenses, was established for the Coushatta Tribe in March 1985. See 50 CFR 12242 (Mar. 28, 1985), 25 CFR 11.1(22).

Since the October 31, 1987, election resulted in an ineligible candidate (accepted by the TEC) being elected, it is our view that a new election must be held. Although it might appear to be appropriate to declare the losing candidate in the October 31 election the Chairperson, in fact, he did not win the election and it would be improper in our view, to recognize him as the holder of the office.

* * * * *

You have inquired what person the Agency recognizes as acting Chairperson of the tribe in this interim period while the Tribal Council prepares to hold another election. We recognize Ms. Beverly Poncho because she encumbers the office of Vice-Chairperson. Her candidacy in the October 31 election does not affect either her position as a Tribal Council member or as Vice-Chairperson.

(Dec. 14, 1987, letter at 1-2).

Also on December 14, 1987, the TEC sent a memorandum to Langley and Council Members stating in its entirety:

In compliance with the judge's ruling dated December 7, 1987. No order was given to void the election of October 31, 1987 and in order not to prolong the issue, TEC rules that Barry Langley be installed as Chairman of the Tribal Council as soon as possible, retroactive December 7, 1987.

When the incumbent, Beverly Poncho was certified to serve as chairperson for the Tribal Council, she did so willingly without prior stipulation from the Tribal Council that she would re-occupy her seat on the Tribal Council after the election in question was settled. In compliance with the ruling, Barry Langley is deemed to have been elected.

Within 45 days, there will be another election to fill the vacancy on the Council.

On December 15, 1987, the TEC certified Langley as the winner of the election.^{5/} The certification form showed Langley as receiving 62 votes, and Beverly Poncho as receiving no votes. The word "Invalid" was written next to Beverly Poncho's name.

On the evening of December 15, 1987, a "tribal council meeting" was held. Present at the meeting were Langley, Viola Battise, Regina Langley, and appellants Anna Thompson and Clamon Thompson. The minutes state: "Due to circumstances of the tribal council two council members were present which presented a quorum." The minutes further show that Langley was sworn

^{5/} The certification form incorrectly shows a date of "12-15-85."

into office as Chairman by Anna Thompson. A tribal council resolution was passed authorizing disbursements from tribal funds on the signatures of Langley, Clamon Thompson, and Tom John.

The Superintendent was informed of the December 15 "council meeting" and, by letter dated December 18, 1987, appellee informed the tribe of certain steps being taken by BIA in response:

We disagree with the TEC's action because we do not believe that the candidate who in fact lost the election should be certified as having won the election. In addition, we believe that since the CFR Court Judge found that one of the two candidates in the election was an ineligible candidate, the proper course of action is to hold another election for tribal chairperson and permit only eligible candidates to contend for the office. The eligibility of candidates in subsequent elections must be determined by the Tribal Council--the body elected by the tribe to make that determination.

To further confuse the situation, two (2) members of the Tribal Council apparently convened a special "meeting" on December 15, 1987. This office has received a document purporting to be the minutes of that meeting signed by the Secretary/Treasurer [Anna Thompson]. The document states that Mr. Langley was sworn into office by one of the two council members at the December 15, 1987, meeting. It is not clear whether appropriate notice of the special meeting was made or who called the special meeting. Certainly, it is clear that a quorum of the council was not present at the purported special meeting.

Since the TEC has inappropriately certified Mr. Langley as chairperson of the Coughatta Tribe and he has been sworn into office at a council "meeting" where no quorum was present, this office has, of course, serious questions as to whether Mr. Langley has the support of a majority of the members of the Coughatta Tribe. The Bureau of Indian Affairs is obligated under its trust responsibility to determine who, for the purpose of relations with the Bureau, is the legitimate tribal representative. See Milam v. Department of the Interior, No. 82-3099 (U.S.D. D.C. 12/23/82) [10 Indian L. Rep. 3013]. We have recognized the Vice-Chairperson as the Acting Chairperson of the tribe since the recall of the former chairman in August 1987, and will continue to do so until we receive clear and coherent information that it is inappropriate to do so.

While we await information, we have determined to impose a moratorium on the period of performance of all Pub.L. 93-638 contracts and grants effective C.O.B. December 16, 1987, until further notice. No person purporting to act for the Coughatta Tribe may incur debts nor commit to expend 638 contract or grant funds after that date. This is not a cancellation of contracts for cause as described in 25 CFR Part 271.75, but is instead a

moratorium on expenditure of federal funds until a recognizable tribal government is in place to conduct business with the Bureau of Indian Affairs.

The moratorium above described on the expenditure of federal funds is an authorized action pursuant to 25 U.S.C. 450f(a)(2) where, as in this case, the "adequate protection of trust resources is not assured." The Secretary may enter into contracts and dispense funds to a tribal organization or "recognized governing body of any Indian tribe". Here, the representativeness of Mr. Langley, the person certified by the TEC and sworn in by a member of the Tribal Council at a council "meeting", is doubtful at best. For this office to permit the expenditure of federal funds at this time by an obviously doubtfully-constituted tribal government threatens the integrity of those funds over which this office and the Bureau has ultimate authority and responsibility.

In order to evidence a recognizable tribal government, you are directed to (1) forward to this office a written response to Superintendent Robert Benn's letter of December 14, 1987, which was addressed to Beverly Poncho and Leola Sylestine * * *. The response should address Mr. Benn's comments specifically. (2) Forward to this office a tribal council resolution calling for an election to choose a tribal chairperson, and (3) forward to this office a copy of all amendments to the tribal election ordinance that are recognized as applicable to the upcoming tribal election for chairperson. [Emphasis in original.]

By letter dated January 13, 1988, Judge Lambert wrote the Acting Chairperson. The administrative record does not reveal the impetus for this letter, which states in its entirety:

It has been brought to my attention that my judgment dated December 7, 1987, for the Coughatta Tribe of Louisiana is not completely clear. The facts in this case are as follows:

The Tribal Election Committee for the Coughatta Tribe of Louisiana (TEC) took the following action:

1. Approved an ineligible candidate to run for the office of Tribal Chairman, for the Coughatta Tribe of Louisiana.
2. The improper approval of that candidate resulted in a Void election. Void ab initio (from the beginning) because of the ineligible candidate. [Emphasis in original.]

Based on the above, it is my recommendation that the correct course of action to take at this time is to conduct a new election and make sure only eligible candidates are approved to run for office prior to the election. Hopefully, this procedure will enable the Coughatta Tribe of Louisiana to hold a valid election.

By resolution passed at a January 14, 1988, tribal council meeting chaired by Beverly Poncho, a new TEC was appointed and a special election was set for February 27, 1988. The resolution had spaces for signatures by Clamon Thompson as Council Member and Anna Thompson as Secretary/Treasurer, but neither space was signed. The election was held as scheduled, with three candidates for chairperson. Lovelin Poncho was certified by the new TEC as receiving 110 of the 165 votes cast at that election. The results of the election were accepted by the Superintendent in a letter dated March 18, 1988, which noted at page 1 that Lovelin Poncho would "serve as the Tribal Chairman to finish the unexpired term of Mr. Leroy Sylestine." The letter also noted that the Superintendent had "been advised that the appeal period expired without any appeals being filed." *Id.* As a result of BIA's recognition of the new Chairman, Federal funds were apparently released to the tribe.

The administrative record indicates that during the period from January through early March 1988, appellants corresponded with appellee concerning the situation in the tribe and the scheduled February election. In an undated letter to appellee, signed in her capacity of tribal Secretary/Treasurer, appellant Anna Thompson wrote:

It is my understanding that there is to be an election schedule tentatively for February 27, 1988. Who authorized the election? and if there is a new T.E.C., who administered the oath? If there is a new T.E.C., what has become of the current T.E.C. My impression of their situation concerning this election is that are too many ambiguities on the matter at hand. Why wasn't the Council or any of the registered voters notified of their so-called election? Until these issues are resolved, an election would serve no purpose and it would be in the best interest to negate.

A response for appellee was sent on March 3, 1988. The letter first reminded appellant that the election was a tribal election, not a BIA election, but stated that the office would recite the facts as we know them and as they have been readily accessible to you as a member of the tribal council.

According to our files, the Coushatta election of February 27 was authorized by tribal resolution No. 87-49 (1-14-88). This resolution was signed by only two (2) members of the council, but this office views it as a valid governmental action in any case because the tribe was required by its governing procedures to hold an election to select a tribal chairperson. As you know, the tribe attempted to hold the required election on October 31, 1987, but that attempt resulted in an election which was void ab initio (from the beginning). The CFR court judge on January 13, 1988, who was appointed to hear the election appeal, clarified her earlier decision to make it plain that the proper course of action after a void election is to "conduct a new election." Therefore, the council's enactment of tribal resolution No. 87-49 is merely a

ministerial act, evidencing a matter not subject to discretion. In fact, the tribal resolution that authorized the election of October 31, 1987, would also be sufficient authorization for the February 27 election. Resolution No. 87-49, in our view, serves primarily to document a date for the required election.

You inquired into the appointment of the TEC which conducted the February 27 election. The composition of this TEC differed from that which conducted the void October 31 election. The earlier TEC obviously failed in its responsibility to properly accept or reject candidates for office thus causing the election to be void ab initio. Our information is that the earlier TEC also failed to respond to the necessity for conducting a follow-up election by persisting in its efforts, with the support of two council members, to declare the loser of the October 31 election as chairman despite the CFR court's ruling. Certainly, in view of the unusual circumstances surrounding the actions of the earlier TEC, it does not seem to be unreasonable that a new TEC was found to be warranted by the tribal membership.

At this writing, this office has preliminary information showing that some 165 Coushatta members cast votes in the February 27 tribal election. This is an increase of over 13% in voter turnout over the October 31 count of 146 ballots. Therefore, your question of whether adequate notice of the February 27 election was accomplished would seem to suggest its own answer. Certainly, a turnout of over 50% of eligible voters indicates that the notice given was adequate. [Emphasis in original.]

A meeting was held on March 28, 1988, with representatives of BIA, staff members of the Louisiana Congressional delegation, and five individuals from the faction of the tribe supporting Langley. At the meeting, the Coushatta delegation requested that tribal funds remain frozen. As a result of the meeting, a notice of appeal, dated March 28, 1988, was presented to appellee. The notice of appeal raised six issues:

1. Reinstatement of moratorium placed on tribal funding until tribal matters in the governing structure are resolved.
2. Shut down all tribal buildings and for whomever holding tribal building keys inclusive of vehicle keys, postal box keys, etc., to surrender to the tribal council, point of contact, Ms. Anna Thompson, Secretary/Treasurer, recognized Tribal Council officer.
3. Rotation of BIA appointed security.
4. Request that all decisions made by the Tribal Council be honored by the BIA.
5. Request that we be supplied all information in regards to how funds were spent, and how much was released since December 16, 1987.

6. Due to loss of Indian Health Service upon moratorium, request that Tribal Council negotiate with IHS in Nashville, Tennessee for services to continue at the Coushatta Indian Reservation.

The notice was signed by each of the five tribal members, including Langley as "RECOGNIZED TRIBAL CHAIRPERSON."

Appellee responded to the notice of appeal by letter dated April 12, 1988. The letter states: "Upon review, we find that the concerns listed in the letter are not the result of actions or decisions by officials of the Bureau of Indian Affairs that adversely affect any interested party and, therefore, are not properly within the purview of federal regulations at 25 CFR Part 2.3" (Apr. 12, 1988, letter at 1). The letter proceeds to address the issues raised only to clarify its statement that the issues did not relate to BIA action. The letter concludes at page 3:

Members of my staff who attended a meeting with five (5) tribal members on March 28, 1988, * * * understood that the intention was to appeal the Bureau's acceptance of the February [27], 1988, election results. If that is the case, this office will certainly accept an appeal based on that Bureau action pursuant to 25 CFR Part 2.

By letter dated April 26, 1988, appellants filed an appeal from appellee's April 12, 1988, letter with the Assistant Secretary--Indian Affairs. This appeal clearly raised the issue of the February 27 election. The notice of appeal stated appellants' beliefs that most of the tribe's problems were caused by appellee's intervention in the tribe's internal affairs.

By letter dated May 19, 1988, appellee responded to appellants' notice of appeal to the Assistant Secretary. The letter states: "Although the appeal was addressed to the Assistant Secretary--Indian Affairs, the Eastern Area Office does not have a final decision on file in this matter and, in order to complete the record, we are rendering this decision on matters raised in this appeal" (May 19, 1988, letter at 1). After discussing the issues raised in the notice of appeal, appellee concluded that the winner of the February 27 election had properly been recognized as the new tribal chairman. The letter also set forth appellants' further appeal rights.

By memorandum dated June 30, 1988, and received by the Board on July 11, 1988, this matter was referred to the Board by the Deputy Assistant Secretary pursuant to 25 CFR 2.19(a)(2). The transmittal memorandum stated that "[a]lthough the appeal involves many issues the main protest is the outcome of the Tribal Election of October 31, 1987." The appeal was docketed and a briefing schedule established by Board order dated July 12, 1988.

The Board received a motion to dismiss this appeal from appellee on August 4, 1988, and a similar motion from appellee's counsel on August 8, 1988. Dismissal was sought on the grounds that the appeal was not timely filed. Appellee asserted that his May 19, 1988, decision was the final decision in this case, and no timely appeal had been taken from that decision.

On August 22, 1988, the Board denied the motions to dismiss, citing Interim Ad Hoc Committee of the Karok Tribe v. Sacramento Area Director, 13 IBIA 76, 83-86, 92 I.D. 46, 50-52 (1985). The Board held that when the appeal from his April 12 letter was taken to the Assistant Secretary, appellee lost jurisdiction over the matter, and so was without authority to issue the May 19 decision.

Both appellants and appellee filed briefs on the merits of this appeal.

Scope of Review

[1] The initial problem in this case is to distinguish between actions taken by BIA and those taken by the tribe. Although the parties have not explicitly addressed this question, it is basic to the Board's jurisdiction. The Board has jurisdiction to review actions and decisions of BIA officials made under 25 CFR Chapter I. It does not have jurisdiction to review decisions made by duly constituted tribal officials or governing bodies. See, e.g., 43 CFR 4.1(b)(2)(i); Rogers v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 15 IBIA 13, 15 (1986), and cases cited therein.

The record discloses the following potentially appealable BIA actions and/or decisions: (1) assigning a CFR court judge to hear Langley's appeal of the October 1987 election results; (2) stating its position in December 1987 that the CFR court judge's determination required that a second election be held, and recognizing Beverly Poncho, the former Vice-Chairman of the tribe, as Chairman until a second election could be held; (3) imposing a moratorium on expenditure of Federal funds by the tribe; (4) ordering the tribe to hold another election; (5) accepting the results of the February 1988 election; and (6) responding to appellants' March 28, 1988, appeal. All of these actions and/or decisions arose out of the problem encountered by the tribe in the conduct of the October 1987 election.

At various stages in this proceeding, appellants have questioned most of these actions and/or decisions. Appellants have also attacked the degree to which BIA became involved with the tribal election controversy, alleging that many of the problems within the tribe were the direct result of BIA's over-zealous interest.

The Board's normal rule of appellate review is that it will consider only those issues and arguments raised below. See, e.g., Estate of George Neconie, 16 IBIA 120, 122 (1988); Falcon Lake Properties v. Assistant Secretary--Indian Affairs, 15 IBIA 286, 292 (1987). Furthermore, notices of appeal must be timely filed, or the appeal will be dismissed. 25 CFR 2.10(b); 43 CFR 4.310(d)(1); Estate of Elmer James Whipple, 16 IBIA 225, 227 (1988); Redfield v. Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 190, 194 (1984).

The document technically forming the basis for this appeal is appellee's April 12, 1988, letter to appellants in response to their March 28, 1988, notice of appeal. As noted in the Background section, supra, appellee concluded that appellants' March 1988 notice of appeal raised only issues that were not the result of actions or decisions by BIA officials. The

letter also stated that if appellants were actually questioning the results of the February 1988 election, an appeal specifically raising that issue would be entertained. Because of this statement, appellee considered and incorrectly treated appellants' April 26, 1988, appeal to the Assistant Secretary as an appeal to himself of the acceptance of the results of the February 1988 election.

The unusual circumstances through which this case has progressed to the Board have resulted in obvious confusion on the part of both appellants and BIA. Accordingly, because appellee has fully set forth his position on the merits of appellants' appeal in his May 19, 1988, response to appellants and his brief filed with the Board, the Board will consider all of the issues raised by appellants at any stage of this proceeding.

Discussion and Conclusions

[2] One of the most fundamental concepts of Indian law is that Indian tribes are dependent sovereign nations that retain full powers of internal self-government except to the extent that those powers have been limited by treaty or express Federal congressional action. See, e.g., United States v. Wheeler, 435 U.S. 313 (1978); Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832); Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831); Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587 (9th Cir. 1983), cert. denied, 466 U.S. 926 (1984); Maryland Casualty Co. v. Citizens National Bank of West Hollywood, 361 F.2d 517 (5th Cir. 1966), cert. denied, 385 U.S. 918 (1966) ("From the beginning of our government, Indian nations or tribes have been regarded as dependent political communities or nations; and as possessing the attributes of sovereignty, except where they have been taken away by Congressional action." 361 F.2d at 520; see also cases cited in footnotes). The corollary of this proposition is that, acting alone, states lack the power to limit the sovereignty of an Indian tribe. E.g., Williams v. Lee, 358 U.S. 217 (1959).

The fact that the Coushatta Tribe of Louisiana is a sovereign Indian nation with the power of self-government was recognized in Langley v. Ryder, 602 F. Supp. 335, 12 Indian L. Rep. 3016 (W.D. La. 1985), aff'd, 778 F.2d 1092 (5th Cir. 1985). In Langley the courts concluded that the land held in trust by the United States for the Coushatta Tribe was a "reservation" and "Indian country" within the meaning of 18 U.S.C. § 1151 (1982), and that the State of Louisiana lacked authority to apply its criminal laws to offenses allegedly committed on that trust land. In formulating the doctrine of tribal sovereignty, the district court stated:

[S]tate laws are not applicable in Indian Country where those laws infringe on the right of tribal Indians to make their own laws and be ruled by them, unless Congress has expressly provided that state law shall apply. That is, Indian tribes retain those attributes of their original sovereignty which are not inconsistent with the dependent status and which have not been divested by federal treaty or statute. [Footnotes omitted.]

602 F. Supp. at 343, 12 Indian L. Rep. at 3019.

It is clear that incorporation under state law does not in itself deprive an Indian tribe of sovereignty. For example, as discussed in Eastern Band of Cherokee Indians v. Lynch, 632 F.2d 373 (4th Cir. 1980), the members of the Cherokee Nation who failed to relocate to Oklahoma were originally not recognized as an Indian tribe, but were regarded merely as citizens of North Carolina. In 1889 the members of the tribe were issued a state corporate charter which gave them those powers belonging to corporations under state law. The charter was amended in 1897 to give the tribe very limited powers of government pertaining only to the control of tribal property. Despite this long-standing incorporation under state law and its limitation of tribal powers of self-government, the court held in 1980 that subsequent Federal recognition of the tribe and the holding of its land in trust by the United States made the tribe equal to other Indian tribes, with the same rights of sovereignty and self-government. The court thus held that the present status of an Indian tribe with respect to the Federal government is the determinative factor in resolving questions relating to its governmental powers.

Despite this well-established body of law, appellants devote most of their briefs on appeal to the argument that this case must be decided under Louisiana law. Thus, at page 2 of their opening brief, they

aver that the Coughatta Alliance is a Louisiana Domestic Corporation, chartered and organized under the laws of the State of Louisiana, and is recognized as such by the United States. The Congress of the United States of America granted authority to States, and Indians within such states, to enter into relations whereby State Laws may be applied to Indians and Indian Tribes, when such Indians or Tribes request or consent to such relations, 25 U.S.C. 476 and 477 et seq. [6/]; and 25 USC 1322 et seq. [Z/] * * *.

Pursuant to Tribal self-determination and as an expression of the will of the Louisiana Coughatta Tribe to be organized and governed by the rules and laws of the State of their residence and domicile, the Tribe applied for and received a Charter memorializing and regularizing the status of their community from the State of Louisiana in 1972. Pursuant to Louisiana Law, and again in accordance with their collective will, they obtained an amended Charter in 1973 from the same sovereign, by leave of the United

6/ The cited statutory sections are part of the Indian Reorganization Act of 1934 (IRA). Section 476 concerns tribal governmental functions, while section 477 deals with incorporation under a charter issued by the Secretary of the Interior.

Z/ Section 1322 is part of the Indian Civil Rights Act of 1968, and grants states the right to assume jurisdiction over civil causes of action between Indians or that arise in Indian country, provided the affected Indian tribe consents to such assumption of jurisdiction in an election held pursuant to 25 U.S.C. § 1326 (1982). Louisiana has not assumed civil jurisdiction over the Coughatta reservation.

States as noted above. * * * Federal law recognizes that Indian Corporations can be citizens of the state where they are located, and a domestic corporation of that state, Parker Drilling Co. v. Metlakatla Indian Community, 451 F. Supp. 1127.

In opting to be organized and governed by the rules of Louisiana, the Tribe has expressed their collective will in a reasonable manner. They have selected an ancient and well-codified body of functioning laws in which to organize and live, which already compliment Indian tribal customs and laws in their daily lives. It is also a body of law with which they are presently familiar, since the tribe is now located within the territorial limits of the State of Louisiana.

Appellants thus contend that because the tribe is chartered as a Louisiana corporation, the Louisiana election code, established under Art. 11, § 1, of the Constitution of Louisiana, applies to this tribal election.

It is not entirely clear whether appellants' argument is (1) that the tribe has agreed to be subject to Louisiana law, per se, or (2) that the tribe has adopted Louisiana law concerning domestic corporations as tribal law. It is clear, however, that, absent a special election held pursuant to 25 U.S.C. § 1326 (1982), the tribe could not have effectively agreed to be subject to state law. 8/ Kennerly v. District Court, 400 U.S. 423, 428-29 (1971). The Board assumes, therefore, that appellants intend to argue that the tribe adopted Louisiana law as tribal law.

We assume, arguendo, that the tribe was initially free to choose any law or system of laws as the basis of its own legal system, including adoption of the laws of the State of Louisiana, either in whole or in part. However, other than through the single act of incorporating under Louisiana law, 9/

8/ Further, as noted in footnote 7, affirmative action by the state would also be required.

9/ The tribe's amended articles of incorporation state the purpose of the corporation in Article Two:

"A. The corporation shall administer donations made by interested persons for eleemosynary, religious, cultural and educational purposes. In particular, the corporation shall promote and preserve the cultural heritage of the Coshatta peoples; disseminate to the general public educational materials relating to the history and culture of Louisiana Indians; and encourage the ethnic unity of Louisiana's Indian citizens. To fulfill this purpose, the corporation may conduct such programs under its own auspices or distribute funds to other tax-exempt entities organized and operated exclusively for religious, charitable, scientific, literary or educational purposes.

"B. The corporation may administer grants made by Federal and State agencies for health, dental and related services for the Coshatta Indian people.

"C. The corporation shall possess all other powers, rights, privileges, capacities and immunities that non-profit corporations are authorized and

the Board finds no evidence whatsoever that the tribe intended to adopt the Louisiana laws relating to domestic corporations or Louisiana laws relating to elections. 10/

Further, even assuming arguendo that the tribe did adopt the state election code when it incorporated under state law, its subsequently enacted tribal election ordinance would have superseded the adopted state law. Accordingly, the questions raised in this case are properly resolved with reference to Tribal Resolution No. 1.

[3] Before beginning any analysis of tribal law, the Board notes that although the Department has the authority and responsibility to interpret tribal law as necessary to effectively carry out the government-to-government relationship existing between the tribe and the Federal government, such interpretation is always undertaken with deference to the tribe's right to initially interpret its own laws and resolve its internal disputes. Thus, the Department gives due consideration to a tribe's reasonable interpretations of its own laws. See, e.g., Menominee Tribal Enterprises v. Minneapolis Area Director, 15 IBIA 263, 266 (1987), and cases cited therein.

All of BIA's actions and/or decisions in this matter arose from its interpretation of Tribal Resolution No. 1. A chronological discussion of those actions and/or decisions, pointing out any errors in BIA's interpretation, will prove most helpful.

BIA's first action in this matter was to respond to a request by Langley for the assignment of a CFR court judge to hear his challenge to the October 1987 election.

Article XI, § 2, of Tribal Resolution No. 1 provides a right of appeal from a decision of the TEC concerning the validity of a tribal election. The section states in its entirety:

fn. 9 (continued)

may hereafter be authorized to possess under the constitution and laws of Louisiana." Clearly, none of these purposes envisions operating the government of the Coushatta Tribe. Neither is there any evidence that the tribe intended to incorporate any substantive laws of the State of Louisiana except those laws relating to the actual rights and privileges of a non-profit corporation.

10/ On its face, the election code cited by appellants, La. Rev. Stat. Ann § 18:602, applies to parish and municipal governing authorities, not to nonprofit corporations. Appellants cite no authority for the proposition that this statute also applies to non-profit corporations; they merely state their conclusion that the statute applies to "domestically chartered entities which exercise any-degree of governmental control with its territory" (Appellants' Opening Brief at 3). The application of this statute to the case at issue would, therefore, apparently require a finding that the Coushatta tribe was a parish or municipal governing authority of the State of Louisiana. Because of the Board's disposition of this case, this issue need not be decided.

a. If the complainant or any person certified as elected in the election in question is not satisfied with the findings of the Tribal Election Committee, he may file a petition with a special appointed CFR Court Judge or a U.S. Magistrate for a review of his complaint by submitting a written request to the Court within two (2) days of receipt of the response from the Tribal Election Committee. A complainant shall also enclose a copy of the original complaint and a copy of the findings of the Tribal Election Committee.

b. The Secretary-Treasurer of the Council shall present all complaints contesting the findings of the Tribal Election Committee to a competent court of jurisdiction which could include a special CFR Court Judge, appointed by the Bureau of Indian Affairs, or a U.S. Magistrate, whichever is more feasible, practical, and expedient, to analyze the findings of the Tribal Election Committee and render a decision within three (3) days to the public and to all parties concerned after having carefully reviewed all the facts connected with the alleged irregularities. This decision will either:

(1) Affirm the decision of the Tribal Election Committee and certify the validity of the election in question, or

(2) Reverse the decision of the Tribal Election Committee and order it to conduct a special election to fill positions vacated by the voided election.

It is thus clear that Langley, having obtained an adverse decision from the TEC, had a right to seek further review of that decision. He filed a timely notice of appeal. Pursuant to the express provisions of Tribal Resolution No. 1, BIA had the authority and responsibility to appoint a CFR court judge to hear the appeal. Therefore, BIA properly appointed a CFR court judge in this case.

Next, in a December 18, 1987, letter to the tribe, appellee stated his position that the decision of the CFR court judge required the tribe to hold another election to fill the position of Chairman. Pending a decision in that election, appellee froze Federal funds administered by the tribe under P.L. 93-638, the Indian Self-Determination and Education Assistance Act, 88 Stat. 2203, 25 U.S.C. §§ 450f-450n (1982). This letter was written in response to actions by the TEC and several members of the tribal council who attempted to install Langley as Chairman despite the CFR court judge's decision. Appellee stated that he had the authority to make this decision based upon his responsibility to administer the government-to-government relationship between the tribe and the Federal government, and cited Milam v. Department of the Interior, 10 Indian L. Rep. 3013 (D.D.C. 1982).

In Milam, BIA faced another situation in which competing factions within a tribe each claimed to be the properly constituted tribal government. BIA was forced to review the tribal constitution in order to determine whether certain tribal officials had been removed from office. In approving this action, the court stated:

The obligation of the BIA to review a tribal constitution is justified under its trust responsibility to administer the government-to-government relations between the United States and the Indian tribes. * * * In administering this trust responsibility the BIA must ensure that Indian rights to self-government are preserved, protected and guaranteed. * * * [I]t is the responsibility of the BIA to ensure that such actions [taken by the tribe] are taken in compliance with the tribal constitution, and that the agency refrain from recognizing any such action taken in violation of the constitution. Nevertheless, measures taken by the BIA to ensure Indian compliance with their constitution must be narrowly tailored so as to be least disruptive of tribal sovereignty and self-determination, yet fulfill the trust responsibility of protecting the integrity of the Indian political process.

Under the circumstances, the court finds that the BIA was obligated under its trust responsibility to determine who, for the purpose of relations with the BIA, was to be the tribal representative. * * * The simple fact is that the BIA was forced to recognize someone as the legitimate tribal representative and that to do so the Secretary was forced to review the procedures followed at and prior to the meeting to determine whether such procedures were in compliance with the Indian constitution. * * *

* * * However, the BIA sought only to determine, for the purpose of administering BIA affairs, the legitimate Indian representative. The BIA's review of the actions taken by the dissident faction was not primarily concerned with the actions of the tribal government. Rather the BIA was concerned with its own responsibility to administer its trust duties to the Indian people. [Footnotes omitted.]

10 Indian L. Rep. at 3015.

BIA's actions in this case were similar to those taken in Milam. In both cases, Federal funds otherwise available to the tribe were frozen pending resolution of the political dispute. Such action was clearly intended to force the tribe to resolve its internal dispute quickly, while protecting Federal funds from possible inappropriate disbursement. In both cases BIA also indicated to the tribe what actions were necessary to demonstrate resolution of the political crisis.

In this case, appellee indicated the action necessary to remove the restriction on expenditure of funds was the holding of a second election. This statement constitutes appellee's interpretation of Tribal Resolution No. 1. As quoted supra, the resolution provides that if an election is declared invalid by a specially appointed CFR court judge or U.S. Magistrate, a new election will be held. 11/ The resolution is clear and unambiguous. Accordingly, when one faction of the tribe attempted to install

11/ Under Art. XI, § 2(b), the CFR court judge's decision is final and not subject to further review. Thus, BIA's acceptance of that decision was proper.

the losing candidate in the October 1987 election as the Chairman, without holding a second election, appellee properly determined that such an action was not authorized under the resolution and correctly refused to recognize Langley as the Chairman. Because the election was rendered void ab initio under Tribal Resolution No. 1, the participants were restored to the same position in which they were prior to the October 1987 election. Thus, Beverly Poncho, as the former Vice-Chairman, remained in that position. It was within BIA's authority to continue to recognize her as the properly constituted head of the tribal government until such time as a new election could be held.

In March 1988 BIA recognized Lovelin Poncho as the new tribal Chairman. This recognition was given after the February 1988 election, in which over 50 percent of the eligible voters cast ballots for three candidates. In recognizing the results of that election, the Superintendent noted that no appeal had been filed from the TEC's determination of the election results.

BIA's actions in regard to recognizing the results of the February 1988 election again represented an interpretation of Tribal Resolution No. 1. This time, however, BIA determined that the resolution was properly followed, the election was valid, the winning candidate was correctly declared the winner, and tribal remedies for contesting the election had been exhausted because the time for filing an election protest passed with no protest being filed. After making these determinations BIA was obligated to recognize Lovelin Poncho as the new tribal Chairman.

Finally, appellee responded to the six issues set forth in the March 28, 1988, notice of appeal filed by appellants. Appellee determined that the issues raised in that appeal were not the result of BIA actions and/or decisions. Appellants have not specifically challenged this holding. Upon review, the decision that each issue raised did not result from a BIA action and/or decision is correct.

Therefore, based on these findings and conclusions, and pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

//original signed
Kathryn A. Lynn
Chief Administrative Judge

I concur:

//original signed
Anita Vogt
Administrative Judge